

are entitled to the execution which is recovered in his name against the plaintiff. *Buckman v. Buckman*, 4 N. H. 319.

But in this case, instead of making defense to the plaintiff's claim, the claimant suggested the death of the defendant, and furnished proof of that fact, and for want of any defendant to prosecute, the plaintiff's action was dismissed, and it might be difficult to see how there could be a party defendant in court entitled to a judgment for costs, when there was no party there against whom the suit could be prosecuted to final judgment. This claimant has been allowed to defend in the name of the defendant of record, has made that defense by showing the defendant's death before suit brought, and has thereby precluded herself from claiming any costs in his name, of this plaintiff, and she can have none in her own name, as she was no party to the record.

The exceptions to the ruling are sustained, and the claim of Sarah II. Marsh for costs against the plaintiff is

Disallowed.

SHAW v. SHAW.

48 170,
169 229.

A note promising to pay "five hundred dollars on demand, with interest annually, payable in four months from date," is a promise to pay the five hundred dollars on demand, and annual interest thereon after four months from date.

ASSUMPSIT, in which the plaintiff seeks to recover the amount due on two promissory notes, each reading as follows, to wit:

"June 15 1860

"For value received I promise to pay Ira Shaw or order five hundred dollars on demand with interest annually payable in four months from date

GEO. W. SHAW"

The parties agreed that judgment should be rendered for such an amount on said notes as the whole court should determine, and the questions of law were reserved.

Shirley, for the plaintiff.

Pike & Barnard, for the defendant.

SARGENT, J. The only ambiguity that exists in this case is patent, appearing on the instrument itself, and no aid is to be sought from extrinsic facts, nor any explanation from parol proof. The intention of the signer must be gathered solely from the contract itself, and such construction is to be given to it if possible as to make every part and every word of the contract operative. If the words "on demand" had been omitted, the contract would have been plain, and it would have been equally so if the words "payable in four months from date" had not been added.

We might suppose that the note was first written in common

form, that is, in the form more common probably than any other in the country among men of limited business, payable on demand, with interest annually, and that some objection was made by the signer to making it payable on demand, and that the subsequent portion was added with the design of limiting the time of payment for both the principal and the interest.

But we should not be justified by any known rules of construction in giving the terms of the note such interpretation or such effect. We are to assume that all the words in this contract were placed there intentionally, and were designed to have some meaning and force in the construction. The words "on demand," in such a contract, can not be rendered senseless, or treated as surplusage, by any just rule of construction, if any interpretation is possible which shall give them force and effect, and at the same time give force and effect to the rest of the contract. *Jilson v. Hill*, 4 Gray 316. The same remark holds equally true in regard to the words "payable in four months from date."

The only way we can readily see to do this is, to make the words "on demand," refer to the next antecedent subject, to wit, the five hundred dollars, and the words "payable in four months from date," to the next antecedent subject, to wit, the interest annually, making the interest payable "in four months," &c., or, what is an equivalent expression in notes of hand, "after four months from date." By that construction the five hundred dollars is payable on demand, with interest annually after four months. The same result will be obtained by simply placing a comma after the word "demand" in the original contract. Let judgment be rendered for the face of the notes, with interest annually thereon after four months from date.

WEYMOUTH v. SANBORN.

A promissory note given for labor does not change the character of the claim, and it is still within the exception of section five of the Homestead Act.

The professional services of a physician do not constitute a claim for labor, within the meaning of that section.

A promissory note executed by the debtor and his wife, but without a mortgage by them of the homestead, is not excepted by the provision of that act from the exemption.

THIS is a writ of entry for premises set off to this plaintiff, upon an execution against the defendant for \$95.96, being part of premises occupied by the defendant as a homestead, the whole being worth \$450. The defendant and his wife claimed the same as a part of their homestead, and made due demand upon the officer to set it out to them, according to the statute, which he refused to do.

Said \$95.96 was the amount of a note given the plaintiff by the defendant, for services as a physician. It was signed by the defendant and his wife.